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## The Latest Development of the Insurance Law in Life Insurance in China

Jing, Zhen; Jiang, Tianyi

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**The Latest Development of the Insurance Law in Life Insurance in China:  
The Third Judicial Interpretation on the Insurance Law by the Supreme People's Court of China**

*Zhen Jing\* and Tianyi Jiang\*\**

## Introduction

The third Interpretation on the Chinese Insurance Law by the Supreme People's Court came into force on 1 December 2015. It has clarified many long-disputed issues relating to insurable interest, beneficiaries and other issues in life insurance in China. This paper critically examines the provisions of the Interpretation and discusses the new development of the Insurance Law by the Interpretation on these issues.

The third Interpretation of the Supreme People's Court on Certain Issues Concerning the Application of the Insurance Law of the People's Republic of China<sup>1</sup> was published on 25 November 2015 and came into force on 1 December 2015 (hereafter the Interpretation (III)). This Interpretation is concerned with issues on provisions of the Insurance Law in life insurance with particular focuses on aspects of insurable interest and beneficiary.<sup>2</sup> China has a civil law system, thus the written law is the major source of law. However, the Supreme People's Court's (SPC) judicial interpretations on written laws have legal force.<sup>3</sup> Especially where a written law is a skeleton or with ambiguities, the SPC's Judicial Interpretations on the written law play a very important role for interpreting provisions of the Law, clarifying ambiguities in the Law, filling gaps of the Law, and introducing new approaches for further development of the Law.<sup>4</sup> Since 2009 when the Insurance Law was amended for the second time, the SPC has published three sets of Interpretations on some provisions of the Insurance Law,<sup>5</sup> for the purpose of

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\*Senior Lecturer, School of Law, Bangor University, UK (z.jing@bangor.ac.uk)

\*\*PhD candidate, School of Law, Bangor University, UK.

<sup>1</sup> The Insurance Law of the People's Republic of China was firstly published in 1995 which was the first comprehensive insurance law in China. The Law includes two parts: insurance contract law and insurance regulation. The Insurance Law has been amended three times in 2002, 2009 and 2015. The 2002 version of the Insurance Law made some amendments on both insurance contract law and insurance regulations. The 2009 version made amendments mainly on the part of insurance contract law. The 2015 version made a few amendments on insurance regulation but no change on the insurance contract law.

<sup>2</sup> For more on insurable interest and beneficiaries in life insurance in China, see Zhen Jing, "Insurable Interest in Life Insurance: A Chinese Perspective" [2014] J.B.L. 337-360 (hereafter Jing's paper on insurable interest 2014); and Zhen Jing, "Beneficiaries in Life Insurance in Chinese Law and Practice" [2013] J.B.L., 463-486 (hereafter Jing's paper on beneficiaries 2013).

<sup>3</sup> According to articles 5 and 6 of the Stipulation of the Supreme People's Court on the Judicial Explanation (2007 No.12), the Supreme People's Court stipulation, judicial explanation or decision have legal force. This means that the Supreme People's Court stipulation, judicial explanation or decision is one of the legal sources in China. Now, in China, the Insurance Law (statutory law), the SPC's Interpretations and the CIRC's regulations constitute the legal framework governing the insurance activities, insurance market and insurance industry.

<sup>4</sup> Following rapid growth of the insurance market in China, in recent years the number of insurance disputes and litigation is increasing at a phenomenal speed. There were 41,752 insurance cases in 2009 tried by different levels courts country-wide, the number increased to 91,555 in the first 10 months in 2015. (See the answers to the journalists by Zhumei Liu (Judge of the SPC and the Vice-President of the Civil Division Two of the SPC) on the Insurance Law Interpretation Press Conference held on 26 November 2015. See [www.scui.gov.cn](http://www.scui.gov.cn) (accessed in December 2015). The Interpretation (III) on the Insurance Law has clarified the ambiguities of some provisions of the Law and provided rules for the courts to follow when hearing insurance cases.

<sup>5</sup> The Interpretation (I) of the Supreme People's Court on Certain Issues Concerning the Application of the Insurance Law of the PRC was published on 14 Sept 2009 and came into force on 1 Oct 2009. The Interpretation (I) mainly concerns the circumstances where the 2002 version of the Law should be applied and where the 2009 version of the Law should be applied. The Interpretation (II) of the Supreme People's Court on Certain Issues Concerning the Application of the Insurance Law of the PRC was published on 6 May 2013 and came into force on 8 June 2013. The Interpretation (II) includes 21 articles which give judicial interpretations and clarify some ambiguities and fill the gaps in the Insurance Law 2009 mainly on matters of insurable interest, duty of disclosure, subrogation and

providing rules for correctly trying cases about disputes over insurance contracts and protecting the legitimate rights and interests of the parties concerned.

The Interpretation (III), the latest SPC's interpretation on the Insurance Law, consists of 26 articles which are concerned with matters on life insurance. It has clarified some long-disputed issues in the following areas: the life insured's consent as a condition for the validity of a death policy, the time when insurable interest must exist, life insured's medical examination and the proposer's pre-contractual duty of disclosure, limitation of a life policy on a minor child, reinstatement of a suspended life policy, beneficiaries, and medical insurance. The Interpretation (III) is helpful for understanding relevant provisions of the Insurance Law. This paper intends to critically examine the provisions of the Interpretation under the following sub-headings, and to discuss the new development of the Insurance Law by the Interpretation on these issues. It is hoped that this paper can also be treated as a sequel of the author's two previous papers on matters of insurable interest and beneficiary of life insurance.<sup>6</sup>

### **The life insured's consent as a condition for the validity of a life policy**

By virtue of article 34 of the Insurance Law, an insurance contract with death as the condition for payment of insurance money is invalid without the insured's consent and his approval for the sum insured. Article 34 does not mention when and how the life insured's consent must be obtained, it is thus unclear whether the insured's written consent must be obtained or his oral consent is sufficient,<sup>7</sup> and whether the insured's consent must be obtained before or after the contract is entered into.

Article 1 of the Interpretation (III) attempts to clarify the ambiguity of article 34 of the Insurance Law on this matter and stipulates that "where a party enters into a contract with death as the condition for the payment of insurance money, in accordance with the provision of article 34 of the Insurance Law, 'the insured's consent and approval of the insured amount' can be made in writing, orally or in any other form when the contract is entered into or can be ratified after conclusion of the contract."

Article 1 of the Interpretation has now answered the questions of when and how the life insured's consent can be made. The consent can be made in any form when the contract is entered into and it can be ratified after conclusion of the contract. However, this article is ambiguous on the issue of ratification of the life insured's consent. The Insurance Law makes the life insured's consent not only a condition for validity of the contract under which the insurance money is payable on the death of the life insured,<sup>8</sup> but also an alternative ground for establishing insurable interest which is supported by neither natural affection nor economic dependency but by consent only.<sup>9</sup> In the case of a death policy that the insurable interest is established by the life insured's consent, ratification of the life insured's consent after the conclusion of the contract can only satisfy the requirement of consent as a condition for the validity of a death policy as required by article 34 of the Insurance Law, but cannot meet the requirements specified by article 12 of the Insurance Law<sup>10</sup> which requires the proposer to possess an insurable interest at the time when the contract is concluded and article 31 of the Insurance Law which makes the contract void if the proposer does not have an insurable interest at the time of the contract.<sup>11</sup>

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exclusion clauses. For more, see Wenhao Han, "Judicial Interpretations on Chinese Insurance Act 2009 from its Highest Court" [2013] the Journal of BILA, No.126, p189.

<sup>6</sup> One paper is Zhen Jing, "Beneficiaries in Life Insurance in Chinese Law and Practice", [2013] J.B.L., 463-486; the other paper is Zhen Jing, "Insurable Interest in Life Insurance: A Chinese Perspective", [2014] J.B.L., 337-360.

<sup>7</sup> In the 2002 version of the Insurance Law, article 56 requires the proposer to obtain the life insured's written consent for making a life insurance contract on him and his approval on the insured amount. For more on this point, see Jing's paper on insurable interest 2014, p346.

<sup>8</sup> The Insurance Law 2009, art.34, para.1.

<sup>9</sup> The second paragraph of article 31 of the Insurance Law provides that "In addition to the persons mentioned in the preceding paragraph, the proposer shall be deemed to have an insurable interest on other person's life who agrees that the proposer may conclude a contract of insurance on his/her life".

<sup>10</sup> Insurance Law 2009, art.12, para.1 provides that "the proposer in life insurance shall have an insurable interest in the life insured at the time the contract is concluded." This point will be discussed shortly.

<sup>11</sup> Insurance Law 2009, art.31, para.3 provides "The insurance contract shall be void if the proposer does not have an insurable interest at the time when the contract is entered into."

Obviously, a question may arise here, namely, does the life insured's post-contract ratification of his consent make the policy valid in this situation? Let us make a hypothetical case to explain the situation. Mark effected a death policy on his girlfriend Kate.<sup>12</sup> Mark signed the proposal form as the proposer and designated himself as the beneficiary and also signed it on behalf of Kate as the life insured. After conclusion of the contract, Mark told Kate about this insurance policy and Kate agreed. She also sent a letter to the insurer to ratify her consent. Thus Kate's post-contract ratification of her consent meets the condition for the validity of the death policy as required by article 34 of the Insurance Law, but does not meet the requirement for the existence of an insurable interest at the time of conclusion of the contract by articles 12<sup>13</sup> and 31<sup>14</sup> of the Insurance Law, as her consent was the only ground for establishing an insurable interest and which was not made before, but after, the conclusion of the contract. According to article 12 of the Insurance Law, the policy is invalid although Kate's ratification satisfies article 34 of the Insurance Law and article 1 of the Interpretation (III). Given that Kate's post-contract ratification of her consent does not meet the requirement of articles 12 and 31 of the Insurance Law which requires an insurable interest at the time of contract, it is submitted that the post-contract ratification in Mark-Kate case should not be valid; the contract effected by Mark is therefore void.

It is suggested that the post-contract ratification of the life insured's consent for the validity of a death policy is valid only in the situation where the proposer has an insurable interest in the life insured when the contract is concluded. It is thus recommended that one sentence be added into article 1 of the Interpretation, which reads "... the ratification of the life insured's consent after conclusion of the contract is valid only for the situation where the proposer possesses an insurable interest in the life insured at the time of conclusion of the contract".

Previously, it was criticized that the life insured's consent as an alternative ground for establishing an insurable interest is problematic and can sometimes give rise to wagering on elderly and vulnerable people in the guise of insurance, and may also increase the risk of murder, because consent might be obtained by duress or other objectionable behavior, particularly where the life insured is old or very young.<sup>15</sup> It was suggested that consent of

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<sup>12</sup> Under the Insurance law, boyfriend and girlfriend has no insurable interest on each other without each other's consent. The relationship of boyfriend and girlfriend does not fall into the list in art.31 of the Insurance Law, but they may be deemed to have an interest on each other where they obtain consent from each other. Art.31 provides that the proposer has an insurable interest on the following persons: (1) himself/herself; (2) spouse, sons and daughters, parents; (3) other family members rather than those mentioned in (2) above or close relatives with whom the proposer has a relationship of fosterage, support or maintenance; or (3) workers with whom the proposer has a labor relationship. Notwithstanding the foregoing, where an insured consents the proposer to take out an insurance contract on him/her, it shall be deemed that the proposer has an insurable interest in the insured.

<sup>13</sup> Art.12, para.1.

<sup>14</sup> Art.31, para.2.

<sup>15</sup> For example, in *Zhang v Pacific Life Insurance Co. Cichuan Branch*, a patient effected life policy but the beneficiary was the patient's doctor. Mr Hu, the patient and the insured, was single, old, poor and not healthy, and Mr Zhang was a medical doctor in a village. Hu visited Dr Zhang regularly for medical treatment. Zhang persuaded Hu to give consent to him to effect life policies on Hu's life and in return promised to offer Hu free medical treatment and free medicine in Zhang's surgery. Zhang then effected 18 life policies on Hu's life (in the form which looked like policies on Hu's own life, with Hu being the "puppet" proposer) in 2003. The insured amount was RMB10,000 for each policy and the duration of each policy was 20 years. Zhang was designated as the beneficiary for each policy and paid premium every year. Zhang in fact had neither natural affection nor pecuniary relationship with Hu. Hu died of disease in 2005. On being turned down of a claim by the insurer on the ground of lack of insurable interest, Zhang sued the insurer and argued that the insurable interest was created by Hu's consent. The Court held that (i) Hu was financially unable to pay premiums. Zhang paid the premiums and was the actual proposer; (ii) Hu's consent to the insurance was not his real intention but induced by Zhang, so his consent could not support an insurable interest. Thus the contract was void. Hu had never been married and had no children. He had no real motive and was unable to afford buying life insurance. His consent was given under the pressure of financial difficulty and his poor health and induced by the offer of free medical treatments and free medicine. According to article 58 of the Civil Code, civil acts performed by a person against his true intentions as a result of cheating, coercion or exploitation of his unfavorable position by the other party shall be void; Hu's consent was therefore invalid. ([www.sc.xinhuanet.com](http://www.sc.xinhuanet.com)).

the life insured should not be treated as equivalent to the actual possession of insurable interest by the proposer in the life insured. Consent as an alternative ground should be abandoned and replaced by economic relationship.<sup>16</sup> In practice, it is not uncommon that the declaration for agreeing to be insured on his/her life at the end of the proposal forms is not signed by the life insured himself/herself, but by other persons, such as his/her spouse, parents, brothers or sisters, or insurance agent etc. So disputes often occur as to the validity of the contract and the insured amount.

To improve the situation, the SPC sets out a number of circumstances under which the life insured is deemed to have agreed the insurance contract to be effected on his/her life. Article 1 of the Interpretation (III) goes further to provide that the insured shall be deemed to give consent to the proposer to take out the life insurance on him/her and confirm the insured amount under any of the following circumstances:

- (1) The insured is aware of the fact that someone else has signed insurance documents (proposal form and policy) on his behalf in terms of his consent, but gives no dissent.
- (2) The insured consents to the beneficiary designated by the proposer.
- (3) Any other circumstances under which there is sufficient evidence to prove that the insured gives consent to the proposer to take out insurance on him.

The Interpretation (III) requires the courts, when hearing life insurance cases, to actively examine whether the proposer has an insurable interest at the time of conclusion of the contract, and whether the insured's consent and approval of the insured amount have been obtained.<sup>17</sup>

The Interpretation (III) also gives the life insured the right to withdraw his consent after the conclusion of the contract. According to article 2 of the Interpretation (III), the life insured may revoke his consent required by article 34 of the Insurance Law by notifying the insurer and the proposer in writing. Where the life insured does such revocation, it is deemed that the contract is rescinded.<sup>18</sup> Because the validity of a life insurance contract with death as a condition for payment of insurance money is based on the life insured's consent, once the life insured withdraws his consent the whole contract becomes invalid. The Insurance Law is silent on this point; the Interpretation (III) fills the gap of the Law.

In an earlier paper,<sup>19</sup> the issue of whether a life insured may withdraw his consent was discussed. There the author argued that "The Law requires the life insured to give consent at the time of contract, but does not mention whether the consent can be withdrawn afterwards. The Law neglects the simple fact that the life insured may wish to withdraw his consent when he feels that his life is at risk because of the existence of the death policy on his life.

The Law expressly entitles the proposer to terminate the contract<sup>20</sup> but does not give such a right to the life insured. It is the life insured whose life may be at risk of a moral hazard, so he should be entitled to withdraw his consent in

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English law does not take consent as an alternative way of establishing insurable interest when a pecuniary interest or an interest based on natural affection cannot be demonstrated. In Issues Paper 4, *Insurable Interest* 2008, the Law Commissions proposed that consent of the life insured should provide an alternative ground for creating insurable interest, where the proposer and the life insured do not fit within the categories of natural affection or a reasonable expectation of loss (see para.7.79 of the Issues Paper 4). It was said that the creation of such an alternative would certainly reduce the difficulties arising from the limited nature of insurable interest in current English law. However, in the Joint Consultation Paper, *Post Contract Duties and Other Issues* 2011, this suggestion was overwhelmingly rejected. Many consultees worried that consent might be obtained by duress or other objectionable behavior, particularly where the life insured was elderly or very young (para.13.60 of the Joint Consultation Paper 2011). So the Law Commissions do not make any further proposal on this issue.

<sup>16</sup> See Jing's paper on insurable interest 2014, p345.

<sup>17</sup> The Interpretation (III), article 3.

<sup>18</sup> Art.2 of the Interpretation (III) provides: "Where the life insured notifies in writing the insurer and the proposer that he revokes the consent made in accordance with article 34 of the Insurance Law, it may be determined that the insurance contract is rescinded."

<sup>19</sup> Jing's paper on insurable interest 2014.

<sup>20</sup> Insurance Law, arts. 15 and 47.

the situation where he feels his life at risk.”<sup>21</sup> In that paper a new provision was recommended to be added into the Insurance Law: “The life insured shall be entitled to withdraw his consent to a contract under which his death is a condition for the payment of the insurance money and the contract shall be terminated accordingly.” Now the SPC’s Interpretation takes the same approach as the author recommended.<sup>22</sup>

### **Insurable interest in life insurance**

Further to the provisions of the Insurance Law regarding insurable interest in life insurance,<sup>23</sup> the Interpretation (III) confirms impliedly that an insurable interest in life insurance contract is required only at the time of the contract. Article 4 of the Interpretation provides: “after an insurance contract is entered into, if a party claims that the insurance contract is null and void since the proposer loses the insurable interest on the life insured, the people’s courts shall not uphold such a claim.” This article means that if the proposer loses his insurable interest on the life insured after the conclusion of the contract, the validity of the contract is not affected. This article reflects and develops the meaning of article 12 of the Insurance Law which requires the proposer to have an insurable interest at the time of the contract only,<sup>24</sup> and article 31 of the Insurance Law which stipulates that the contract is void where the proposer has no insurable interest at the time of the contract. This approach is very similar to the English case law under which an insurable interest is required only at the time when the contract is entered into, but not required at the time when the insured event occurs.<sup>25</sup> As was argued by the author in a previous article,<sup>26</sup> this approach may give rise to mischievous consequences, because in many situations, the insurable interest in a life policy may lapse after the contract is effected, and some recommendations for improving the approach were made by the author.<sup>27</sup>

### **Medical examination and the proposer’s duty of disclosure**

The duty of disclosure is imposed on the proposer by article 16 of the Insurance Law. The Law requires the proposer to perform his duty by truthfully answering the insurer’s questions about the subject matter and the insured. In life insurance the life insured is often asked to take medical examination before the insurer makes the decision on whether he will take the risk and, if so, on what terms and what premium rate. In this situation, an issue often arises, that is, whether medical examination may replace the proposer’s duty of disclosure of material facts.<sup>28</sup>

The Insurance Law does not mention this point, many courts have the view that medical examination of the life insured cannot be a substitute for the insured’s duty of disclosure of the life insured’s health condition. The High People’s Court (HPC) of Beijing, the HPCs of Guangdong Province and Shandong Province have the same view that proposer’s duty of disclosure cannot be replaced by medical examination by the medical agents authorised by the insurers.<sup>29</sup> In judicial practice, some courts held that if the proposer withholds material facts about the insured’s health condition which is not revealed by the medical examination, it is deemed to be a non-disclosure.<sup>30</sup>

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<sup>21</sup> Jing’s paper on insurable interest 2014, p.348.

<sup>22</sup> The Interpretation (III), art.2.

<sup>23</sup> Insurance Law, article 12(1) concerns the time when an insurable is required in life insurance and art.31 provides a list showing who has an insurable interest on the life insured. See Jing’s paper on insurable interest 2014 for detailed discussion.

<sup>24</sup> Art.12 of the Insurance Law provides: “when entering into a personal insurance contract, the proposer shall have an insurable interest in the life insured.”

<sup>25</sup> *Dalby v India and London Life Assurance Co* (1854) 15 C.B 365.

<sup>26</sup> Jing’s paper on insurable interest 2014, p.351.

<sup>27</sup> *Ibid.*

<sup>28</sup> This issue was discussed in a previous article. See Zhen Jing and Ming Zhong, “Limitations on the Insured’s Duty of Disclosure: A Comparative Analysis with English, Australian and German Laws” (2015) Vol.26, Issue 7, ICCLR, pp.224-235, at 233.

<sup>29</sup> The Guidance of Beijing City High People’s Court Concerning Questions of How to Deal with Insurance Disputes 2005, art.9; the Guidance of Guangdong Province High People’s Court Concerning Questions of How to Deal with Insurance Disputes 2011, art.5; and the Guidance of Shandong Province High People’s Court Concerning Questions of How to Deal with Insurance Disputes 2011, art.6.

<sup>30</sup> In *Mr Liu v Life Insurance Co.*, Mr Liu applied for a life policy with critical illness cover, and had a medical examination in the hospital (which was nominated by the insurer). After the examination the insurer effected the

Now the Interpretation (III) expressly confirms the above view. Article 5 of the Interpretation provides: “When entering into an insurance contract, where the life insured is requested to conduct medical examination in a medical institution designated by the insurer, if a party claims that the proposer’s duty of disclosure is exempted by the medical examination, the people’s courts shall not uphold such a claim.” This provision indicates that even if the life insured takes the medical examination which may show the health problems (if any), the proposer still owes the duty of disclosure, and the medical examination cannot replace the proposer’s duty. The proposer cannot argue that the medical examination report may tell the insurer the physical condition of the life insured, so that it is not necessary for him to disclose the fact to the insurer about the health status of the insured. However, the scope of the proposer’s duty of disclosure is limited within the questions asked by the insurer. Article 5 of the Interpretation must be read with article 16 of the Insurance Law. Article 16 provides that when entering into an insurance contract, the insurer may make inquiries about the status of the insured subject matter or the insured, the proposer shall make a truthful disclosure thereof. To satisfy these two articles, it is submitted that in addition to the insured’s medical examination, the proposer still needs to truthfully answer the insurer’s questions about the life insured’s health status.

On the other hand, the article 5(2) of the Interpretation (III) further provides that “where the insurer is aware of the result of the life insured’s medical examination, but still demands rescission of the contract on the ground that the proposer failed to disclose the relevant facts. The People’s courts shall not uphold such a demand.” This means that where the insurer knew the fact which was revealed by the medical examination, but still entered into the contract, if he demands to rescind the contract on the ground of the proposer’s non-disclosure of the relevant fact, the people’s court shall not uphold the insurer’s demand. This provision is in fact an instance for article 16(6) of the Insurance Law which provides that “where the insurer knows that the proposer fails to make a truthful disclosure at the time of entering into a contract, the insurer may not rescind the contract; where an insured event occurs, the insurer shall be liable for making indemnity payment or paying insurance benefits.”<sup>31</sup>

### **Life policy on a minor child**

Article 6 of the Interpretation (III) has further developed articles 33 and 34 of the Insurance Law. Article 33 of the Insurance Law prohibits a life insurance policy to be effected on a person who has no capacity for civil acts if the policy is a death policy under which the death of the life insured is a condition for payment of the insurance money.<sup>32</sup> However, a policy taken out by a parent on his minor children is an exception to this rule, provided that the total amount of the death benefits thereof shall not exceed the limit as provided by the insurance supervision and regulation authority of the State Council.<sup>33</sup>

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policy in August 2006. In July 2008, Mr Liu was diagnosed with coronary heart disease, hypertension, hyperlipidemia and fatty liver, and was treated in hospital. The insurer rejected Liu’s claim for medical expenses on the ground of non-disclosure of the fact that Liu was treated in hospital for hypertriglyceridemia and suspected hypertension in January 2006, but he had answered “no” to the question “Have you had any medical treatments in hospital in the last 5 years” in the proposal form. Liu argued that he had taken the medical examination arranged by the insurer before the contract was entered into, so he had no duty of disclosure on this. The court held medical examination cannot replace the insured’s duty of disclosure. (This case was decided by the People’s Court of Xingqing District, Yinchuan City, Ningxia Autonomous Region, Civil Court Judgement (2009) No. 312, and reported in the *Annual Report of the Typical Insurance Cases* (Law Press China, 2010), Vol.2, p15).

<sup>31</sup> This is similar to the German law under which, an insurer does not have the right to rescind the contract if the insurer was aware of the undisclosed risk factors or the incorrectness of the disclosure (s.19(5) of the German Insurance Contract Act 2008). For more on this point, see Zhen Jing and Ling Zhu, “Restrictions on the insurer’s defence of non-disclosure or misrepresentation in Chinese Insurance Law” (2015), *Ins.L.J.*, vol 26, 145-167.

<sup>32</sup> Art.33(1) of the Insurance Law provides: “A proposer shall not apply for and the insurer shall not underwrite a personal insurance under which the death of the life insured is a condition for payment of the insurance money on the life of a person who has no civil acts capacity.”

<sup>33</sup> Art.33(2) provides that a life policy taken out by a parent on his minor children shall not be subject to the preceding paragraph. Nevertheless, the total amount of the death benefits thereof shall not exceed the limit as provided by the insurance supervision and regulation authority of the State Council.

The China Insurance Regulatory Commission (CIRC) plays the role as the insurance supervision and regulation authority. According to the CIRC’s Notice of “the limitation of the sum insured for a death insurance taken out by a parent on his minor child payment of the insurance money” CIRC, No 95, 15 November 2010, the insured amount



Article 34 of the Insurance Law makes a policy with death as a condition for payment of the insurance money void without the consent of the life insured and his approval on the amount of the insurance.<sup>34</sup> Again this rule does not apply to the case where a parent takes out an insurance on his minor children.<sup>35</sup>

Articles 33 and 34 of the Insurance Law do not provide whether the legal guardian of a minor child may take out insurance on the child as his parent does. Article 6 of the Interpretation (III) fills the gap of the Law by providing that any person other than the parents of the minor who fulfills the duty of guardianship may not enter into a contract for the minor with death as the condition for the payment of insurance money. If a party claims that the validity of such a contract made by a minor's legal guardian should be determined in accordance with the provisions of paragraph 2 of article 33 and paragraph 3 of article 34 of the Insurance Law, the People's court shall not uphold such a claim, unless the contract is entered into with the consent of the minor's parents. So it is clear now that a minor's legal guardian cannot freely take out such a life insurance on the minor without the consent of the minor's parents. Article 6 of the Interpretation (III) intends to protect minor children.

### **Reinstatement of a suspended life policy**

By virtue of article 36 of the Insurance Law, where an insurance contract specifies payment of the premiums in instalments, the contract shall be suspended if the proposer fails to pay any installment on time within the grace periods provided by law.<sup>36</sup> Nevertheless, the suspended policy can be restored if the requirements specified in article 37 of the Insurance Law are satisfied.

According to article 37 of the Insurance Law, the suspended contract can be restored if the parties have reached an agreement and the proposer has paid the outstanding premiums. However, the insurer has the right to rescind the contract if no agreement has been reached by the parties within two years from the date of the lapse of the contract. Where the insurer rescinds the contract, he shall refund the proposer the cash value of the policy.

The procedures to restore a lapsed life policy are usually provided in the policy. For example, in the life policy of the China Life Insurance Company, it is provided that within two years after the contract is suspended, if the proposer wishes to restore the policy, he may complete a "policy restore application form", and return the completed form with other documents required by the insurer, such as the medical statement or a medical examination certificate issued by the hospital designated by the Company. The validity of the contract, upon an agreement being reached between the Company and the proposer, shall be restored from the following day after the premium arrears with corresponding interests being paid.<sup>37</sup>

In practice, an adverse selection for restoration often occurs, that is, the proposer's applying for the restoration of a suspended policy usually happens in the situation where the degree of the insured risk increases during the suspension of the policy. More often than not, the insurer would reject such an application. It is fair and reasonable

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limitation on the life policy effected by the parents on the life of their minor children was RMB100,000 in 2010. To cope up the inflation, in 2015, the CIRC again increases the insured amount limitation for the above type of policy:

- (1) Where the life insured is younger than 10 years old, the insured amount shall not exceed RMB200,000;
- (2) Where the life insured is over 10 years old but younger than 18 years old, the insured amount shall not exceed RMB500,000.

(See article 1 of the CIRC's Notice on matters in relation to life insurance where parents effect policy on the life of their child under which the death of the life insured is a condition for payment of insurance money, CIRC (2015) No.90)

<sup>34</sup> Art.34 of the Insurance Law provides that an insurance contract with death as a condition for payment of the insurance money is void without the consent of the life insured and his approval of the amount of the insurance.

<sup>35</sup> Ibid., para.2.

<sup>36</sup> Art.36 of the Insurance Law provides: "Where the contract specifies payment of the premiums in instalments and the proposer has paid the first instalment but fails to pay the current instalment over thirty days from the date when the insurer reminds the payment or over sixty days from the date the instalment is due, the contract shall be suspended, or the insurer may reduce the sum insured in accordance with the contract, unless otherwise agreed in the contract."

<sup>37</sup> Life Insurance Policy of the China Life Insurance Company, Clause 3(1).

for the insurer to reject adverse selection. However, the Law requires an agreement to be reached between the proposer and the insurer for the reinstatement of a lapsed policy; if no agreement is reached, the lapsed policy is never restored. Thus the insurer is in essence put in a dominating position to agree or reject an application for reinstatement of a lapsed policy without any particular restriction on his rejection of an application. In other words, the circumstances under which the insurer may turn down an application for reinstatement is unclear in article 37 of the Insurance Law.

Now, the SPC's Interpretation clarifies the ambiguity of article 37 of the Insurance Law and provides a restriction on the insurer's rejection of application for reinstatement of a lapsed policy. Only under one circumstance is the insurer allowed to turn down application for reinstatement, that is, the degree of the risk in respect of the insured has significantly increased during the period of suspension. Article 8 of the Interpretation (III) stipulates "Where the validity of the insurance contract is suspended in accordance of article 36 of the Insurance Law, and the proposer applies for restoration of the suspended contract and agrees to pay the outstanding premiums, if the insurer rejects the proposer's application for the restoration, the people's courts shall not support the insurer's rejection, *unless the degree of the risk in respect of the insured has significantly increased during the period of suspension*".<sup>38</sup>

Article 8 of the Interpretation further provides that "upon receiving the application for reinstatement of the validity of the suspended contract, if the insurer does not explicitly reject it within 30 days, it shall be deemed that the insurer has agreed to resume the validity of the contract. The validity of the contract shall be resumed from the date when the proposer pays the premium arrears. Where the insurer requests the proposer to pay the corresponding interests, the People's court shall uphold such a request."

Article 8 of the Interpretation supplements article 37 of the Insurance Law in three aspects. First, article 8 rules that if there is no significant increase of risk of the life insured during the period of suspension of the contract, the insurer is not allowed to reject the proposer's application for restoration of the lapsed policy; secondly, if the insurer does not reject the proposer's application for restoration within 30 days upon receiving of the application, it shall be deemed that he has agreed the contract to be restored, and the contract shall be restored from the date when the proposer pays the outstanding premiums; and thirdly, the insurer has the right to require the proposer to pay interests in addition to the payment of the outstanding premiums.

The key development of article 8 of the Interpretation to the Insurance Law is that it has imposed a restriction on the insurer's right to reject the proposer's application for the restoration of a suspended policy. This provision, it is submitted, have two significant contribution to the development of the Law relating to the principle of good faith.

First, from the perspective of the proposer, he is not allowed to make an adverse selection for the restoration of the policy, namely, if the degree of risk of the insured increases significantly,<sup>39</sup> the insurer is entitled to reject the application for the reinstatement<sup>40</sup>; secondly, from the insurer's perspective, he is not allowed to reject the proposer's application for the restoration of a suspended policy if there is no significant increase of the insured risk during the suspension. For example, a disease which was developed or diagnosed prior to the suspension of the contract cannot form the ground for rejection of the application for the reinstatement. This restriction can reduce the opportunity for the insurer to unreasonably reject applications for restoration, particularly in the case of a bad bargain.<sup>41</sup>

Furthermore, article 8 of the Interpretation also implies that the proposer must perform the duty of disclosure of material facts at the time when he applies for the restoration of the suspended policy. He must disclose to the insurer where the risk is materially increased during period of the suspension of the policy in order for the insurer to

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<sup>38</sup> Highlights are added by the author in order to address the main points.

<sup>39</sup> To determine the meaning of "significant increase of risk", see Zhen Jing, "The Insured's Post-Contract Duty of Notification of Increase of Risk: A Comparative Perspective" (2013) J.B.L., Issue 8, pp.842-867.

<sup>40</sup> Where a life policy is suspended, it is often the case that after it is suspended, the proposer wishes to reinstate the suspended contract where the life insured's health condition is getting worse or the life insured has developed new disease. If an adverse selection is not limited, it would not be fair to the insurer.

<sup>41</sup> If there is no law to govern the matter, the insurer may take the opportunity to reject the proposer's application for the restoration of the policy on the ground of a disease which was developed or diagnosed prior to the suspension of the contract.

make the decision whether he will agree the restoration of the policy. Certainly, the proposer's performance of the duty should be made by way of answering the questions raised by the insurer in relation to the restoration.<sup>42</sup>

## **Matters on beneficiaries**

In life insurance, the most disputable issues are probably about matters of beneficiary. The Insurance Law provides rules governing the matters of beneficiary in articles 31, 39, 40, 41, 42, 43 and 44 of the Insurance Law. However, due to ambiguities, confusions and lacuna in the Law, disputes often arise in practice.<sup>43</sup> The SPC has attempted to make the rules clearer in articles 9 to 15 of the Interpretation (III), which are concerned with matters of beneficiaries in respect of designation of beneficiary(s) and distribution of insurance moneys to the beneficiary(s) and other issues, which are the topics to be discussed below.

### ***Designation of beneficiaries***

Article 9 of the Interpretation (III) confirms that if the designation of beneficiary(s) is made by the proposer without the consent of the life insured, the people's courts shall find the designation ineffective.<sup>44</sup> If the parties have disputes on beneficiaries, except for the situation where the proposer and the life insured have other agreement outside the insurance contract, the disputes can be dealt with under the following circumstances:

- (1) Where the beneficiaries in the insurance contract are to be "determined by law" or "legal successors", the beneficiaries shall be the legal successors determined in accordance with the Inheritance Law;<sup>45</sup>
- (2) Where the beneficiaries are designated only based on the identity relationship, if the proposer and the life insured is the same person, the beneficiaries shall be determined by the relationship between the life insured and the beneficiary(s) at the time of the occurrence of the insured event; if the proposer and the life insured are different persons, the beneficiary(s) can be determined by the relationship between the life insured and the beneficiary(s) at the time of conclusion of the contract.
- (3) Where the beneficiary(s) is designated with both the name and the identity relationship, if the relationship has been changed at the time of the occurrence of the insured event, it shall be deemed that no beneficiaries are designated.

As to the circumstance (1) mentioned above, the proposer sometimes fills the beneficiary box in the proposal form with the words "determined by law" or "legal successors". That means that the beneficiary(s) was not designated at the time of the contract, but should be determined by law when the insured event occurs. This situation often causes disputes when disbursing the insurance money. The following case illustrates the problem where the designation of the beneficiary is very vague.<sup>46</sup> The mother and the step father effected a life policy on their daughter in 2002. In the policy no beneficiary was specified, but the two words "Fa Ding" (meaning of "determined by law")<sup>47</sup> were written in the box of the beneficiary. The life insured died in 2009, all her mother, step father and her natural father

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<sup>42</sup> See Zhen Jing and Ming Zhong, "Limitations on the Insured's Duty of Disclosure: A Comparative Analysis with English, Australian and German Laws" (2015) ICCLR, Vol.26, Issue 7, 224-235

<sup>43</sup> Detailed discussion was made by the author on these matters in another article, see Jing's paper on beneficiaries 2013.

<sup>44</sup> Art.39 of the Insurance Law provides: "the beneficiary of a life insurance policy shall be designated by the life insured or the proposer. Designation of the beneficiary by the proposer is subject to the life insured's consent....".

<sup>45</sup> See chapter 2 "legal inheritance" and chapter 4 "Estate dispose" of the Inheritance Law of the People's Republic of China 1985.

<sup>46</sup> *Mr Wei v Pingan Life Insurance Co.*, (2009) (See [www.xy178.com/news/a/](http://www.xy178.com/news/a/), reported on 15 May 2011). The mother and step father effected a life policy on the life of their daughter, but the daughter's natural father became one of the beneficiaries. See also *Dong Qin v China Life Insurance Beijing Branch* (2007), this case was cited by J. X. Liu in his book, *Resolutions to the Classical and Difficult Cases of Insurance Law* (Law Press, 2010), p. 479.

<sup>47</sup> The phrase "Fa Ding" means the beneficiary(ies) should be determined according to law. This phrase is very vague, and there is no definition for this phrase. Zhenyu Liu and others have the same opinion and said that the words "Fading shouyiren (beneficiary is determined according to law)" do not have the same meaning of "Fading jichengren (Legal successor)", so it should be deemed that the designation of the beneficiary is vague. See Zhenyu Liu (Editor), *Life Insurance Law and Practice* (Law Press China, 2012), p72.

claimed for the insurance moneys. The dispute arose as the result of the two tricky words “Fa Ding” which caused difficult in determining who would fall into the category. Literally “Fa Ding” means that any person who has legal relationship with the life insured could be a beneficiary in such a case. Thus, according to Chinese Inheritance Law the girl’s mother, step father and her natural father all have a right to claim for the insurance money.<sup>48</sup> However, in accordance with the provision in article 42 of the Insurance Law, the insurance moneys is treated as the life insured’s estate if no beneficiary has been designated or the designation is so vague that the beneficiary could not be determined.<sup>49</sup> The disadvantage of treating the insurance money as the life insured’s estate is that the insurance money is subject to taxes and debts of the deceased life insured.<sup>50</sup> In an earlier paper, the author argued that “it is not appropriate to disburse insurance money as the life insured’s estate”, and suggested that “the life insured’s legal successors should be treated as the named beneficiaries in the sense that they are the persons who have right to receive the insurance money”.<sup>51</sup>

The SPC has now treated the legal successors of the life insured as the beneficiaries under the circumstances (1), where the words “determined by law” or “legal successors” were put in the box of beneficiary in the proposal form, accordingly, the insurance money does not treated as the estate of the deceased life insured under the circumstance (1).

The circumstance (2) mentioned above covers two situations where the beneficiaries are determined based on the identity relationship: first, the proposer and life insured is the same person, and second, the proposer and the life insured are different persons. The first situation can be explained in the following case.<sup>52</sup> A proposer effected a policy on his own life, designated his wife as the beneficiary, but failed to insert her name in the policy, only put the words “my wife” in the box of beneficiary. The proposer later divorced his wife and remarried another woman. When the life insured died both his ex-wife and his new wife claimed for the insurance money. By Chinese Marriage Law and Inheritance Law, his new wife should be his legal successor, thus should benefit from the insurance. His ex-wife did no longer have any legal relationship with him when the life insured died,<sup>53</sup> so she had no right to recover. However, the initial purpose of the life insured to take out insurance was to benefit his ex-wife who was then his wife. Furthermore, according to article 12 of the Insurance Law,<sup>54</sup> insurable interest is required at the

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<sup>48</sup> According to article 10 of the Chinese Inheritance Law, the spouse, children and parents have the right to inherit the deceased estate. The “children” referred to in this Law include legitimate children, illegitimate children and adopted children, as well as step-children who supported or were supported by the decedent. The “parents” referred to in this Law include natural parents and adoptive parents, as well as step-parents who supported or were supported by the decedent.

<sup>49</sup> Art.42 of the Insurance Law provides that “Upon the death of the life insured, the insurance moneys shall become the life insured’s estate, and the insurer’s obligation to pay insurance moneys shall be performed in accordance with the Inheritance Law of the People’s Republic of China, under any of the following circumstances:

- (1) where no beneficiary has been designated or the designation is so vague that the beneficiary could not be determined thereby;
- (2) where the beneficiary dies prior to the death of the life insured and there is no other beneficiary; or
- (3) where the beneficiary loses his beneficiary right according to law or he waives his right, and there is no other beneficiary.

Where the life insured and the beneficiary die in the same accident, and the sequence of the death cannot be determined, it is presumed that the beneficiary dies prior to the death of the life insured ”

<sup>50</sup> Where the insurance money is disposed as the life insured’s estate, according to the Inheritance Law, the successors must pay taxes and debts of the decedent. Article 33 of Chinese Inheritance Law provides “The successor to an estate shall pay all taxes and debts payable by the decedent according to law, up to the actual value of such estate, unless the successor pays voluntarily in excess of the limit. ...”; while if the life insured’s legal successors are treated as beneficiaries, they have the right to recover insurance moneys without paying the estate taxes. As to the approach that the insurance money to be disbursed as the life insured’s estate specified in article 42 of the Insurance Law, the author disagreed with this approach. See Jing’s paper on beneficiaries 2013, p.478.

<sup>51</sup> Jing’s paper on beneficiaries 2013, p.478.

<sup>52</sup> See Baoming Li and Weihong Ju, “The Issues about Life Insurance Beneficiaries” (1998), Insurance Studies, No. 7, pp.39-41.

<sup>53</sup> See the Marriage Law of the People’s Republic of China 1981, article 24.

<sup>54</sup> According to arts. 12 and 31 of the Insurance Law 2009, the proposer must have an insurable interest in the life insured at the time the contract is concluded, otherwise the contract is void.

inception of the policy,<sup>55</sup> it could be inferred that, in theory, the determination of the beneficiary should be made in correspondence with the situation and the intention of the life insured at the time when the policy was effected. This is really an awkward situation to deal with. The SPC has now clarified this issue by providing that where the beneficiary is designated in the policy by using only the identity relationship between the life insured and the beneficiary such as “my wife”, the relationship should be determined at the time when the insured event occurs.<sup>56</sup> So in this case, the current wife (not the ex-wife) should be the beneficiary.

In addition, article 9(2) of the Interpretation (III) mentions another situation, namely how to determine the beneficiary(s) based on the identity relationship where the proposer and the life insured are different persons. The SPC takes the view that in this circumstance, the beneficiary(s) can be determined by the relationship between the life insured and the beneficiary(s) at the time when the contract was concluded. For insurance, if a wife effects a life policy on her husband and put the words “my sons” (they have two sons then) in the beneficiary box. When the life insured dies, the couple have three sons (the third son was born after the conclusion of the contract). According to article 9(2) of the Interpretation, the beneficiaries shall be determined based on relationship at the time when the contract was entered into, thus only their two older sons have the right to receive the insurance benefits. However, if the wife effects a life policy on her own life and appointed her sons to be the beneficiaries, the consequence would be quite different, the beneficiary(s) would be determined at the time when the insured event occurs, her three sons would be determined as the beneficiaries. This seems a strange situation, and it is unclear what the reasoning is for this provision and why the methods of determination of the beneficiary in the two situations described in article 9(2) are different. This needs further calcification by the SPC.

The circumstance (3) mentioned above concerns the situation where the beneficiary is designated with both the name of the beneficiary and the identity relationship with the life insured. For example, where the proposer takes out a life policy on his own life and designates his wife as the beneficiary. He inserts the words “Mary, my wife” into the policy. The life insured divorced his wife (Mary) and remarried Sarah. When the life insured dies, it would be difficult to determine the beneficiary. If the name is used to determine the beneficiary, his ex-wife Mary should be the beneficiary; while if the relationship is used to determine the beneficiary, his wife Sarah should be the beneficiary. The SPC now treats this case as the situation where no beneficiary is designated.<sup>57</sup> Then article 42(1) of the Insurance Law applies in this situation which states that where no beneficiary is designated, the insurance money shall be disbursed to his legal successors as the life insured’s estate. It is submitted that this rule is not convincing, because the designation of the beneficiary was very sure and ascertained with the name and identity relationship when the contract was concluded. If the relationship had been changed prior to occurrence of the insured event, (for example, in case of a divorced couple), the life insured would have changed the beneficiary if he wished. If he had not done so before he died (no matter what the reason would be, negligence or intention), the named person should be determined as the beneficiary.<sup>58</sup> It might be the situation that even if the couple gets divorced, the life insured still wish to keep his ex-wife to be the beneficiary.<sup>59</sup> If by negligence the life insured failed to change the beneficiary from his ex-wife (the named) to his new wife, that is his own fault, the beneficiary right of his named ex-wife should not be deprived.

To summarise, article 9 of the Interpretation (III) provides rules for determination of beneficiaries for three specific circumstances where the designation of beneficiaries is not clear-cut. Under circumstances (1) and (2), the insurance money is not treated as the life insured’s estate, and the legal successors of the life insured are determined as the beneficiaries. As compared with the treatment of insurance money as the estate of the life insured, this certainly offers a better solution to the persons for whose benefit the insurance policy was effected. However, the rule under

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<sup>55</sup> English law requires that an insurable interest must exist at the time of the contract. See *Dalby v. India and London Life Assurance Co.* (1854) 15 C.B. 365.

<sup>56</sup> The Interpretation (III), art. 9(2).

<sup>57</sup> *Ibid.*, art. 9(3).

<sup>58</sup> In a previous paper, the author gave the same suggestion: “If the ex-wife’s name had been inserted in the policy she would have had the right to claim the insurance money because she had an insurable interest at the inception of the contract and this satisfies arts 12 and 31 of the Insurance Law, but if no name is inserted in the policy, the new wife, as her husband’s legal successor, should have the right to receive the insurance money.” See Jing’s paper on beneficiaries 2013, p477.

<sup>59</sup> See fn.73 for the case as an example.

circumstance (3) is rather arbitrary and unconvincing as was argued above. The name of the beneficiary is the unique identity, while the relationship can sometimes be changed. It is suggested that where the beneficiary is designated with both the name and the identity relationship, if the relationship has been changed at the time of the occurrence of the insured event, *the beneficiary should be determined by name*.<sup>60</sup>

### ***Change of beneficiary***

The Insurance Law permits the life insured or the proposer to change the beneficiary during the insurance period. Article 41 of the Insurance Law provides that “the life insured or the proposer may change the beneficiary and in this case he shall notify the insurer in writing. Upon receiving the notice, the insurer shall endorse the change on the policy or other insurance certificate or attach an endorsement slip to the insurance contract or insurance certificate. The change of the beneficiary by the proposer shall be made subject to the consent of the life insured.”

However, there is a question in this article, that is, when will the change of the beneficiary take effect, i.e. from the time when the proposer send off the letter of changing beneficiary to the insurer, or from the time when the insurer has received the letter? The time may become very important in some situations. It is not impossible that the insured event occurs during the period from the time point when the letter is sent off to the time point when the insurer has received the letter and, if so, disputes may arise on who the beneficiary is and whether the change of the beneficiary becomes effective.

Article 10 of the Interpretation (III) clarifies the point of time when the change of the beneficiary becomes effective by stating that the People’s courts shall support the parties who claim that the change of beneficiary takes effect from the time when the intention for the change is expressed.<sup>61</sup> So the effect of article 10 of the Interpretation is that the change of beneficiary is retrospective to the time point when the proposer sends off the letter to the insurer.<sup>62</sup> The date of the letter or the stamp of the post office should be taken as the time point for the effectiveness of the change of the beneficiary. However, if the proposer or the life insured who intends to change the beneficiary has not notified the insurer, the people’s court shall support the insurer’s claim that the change of the beneficiary is ineffective.<sup>63</sup>

The change of the beneficiary must be made before the occurrence of the insured event and the change shall be ineffective if it is made after the event has occurred. By virtue of article 11 of the Interpretation (III), “If the proposer or the life insured changes the beneficiary after the occurrence of the insured event, where the new beneficiary claims for the insurance money the People’s court shall not uphold the claim.”

### ***Distribution of insurance moneys***

The Insurance Law sets forth some rules in respect of distribution of insurance benefit to one or more beneficiaries. Article 42 of the Insurance Law deals with the situation where only one beneficiary is designated who unfortunately dies before the life insured does, or who gives up the beneficiary right, or loses the beneficiary right by operation of law. In these circumstances the insurance money shall be disposed as the life insured’s estate when the insured event occurs. The insurer’s obligation to pay insurance moneys shall be performed in accordance with Chinese Inheritance Law.<sup>64</sup>

Article 40 of the Insurance Law allows the life insured or the proposer to designate one or more beneficiaries. If there are more than one beneficiaries, the life insured or the proposer may specify the sequence of the beneficiaries and their respective proportions of insurance benefits; in the absence of such specification on proportions, all the

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<sup>60</sup> There are different opinions on this points. See Linqing Wang, *The Insurance Law & Its Judicial Application – Issues on the Insurance Law* (Law Press China, 2013), p588.

<sup>61</sup> The Interpretation (III), art.10(1).

<sup>62</sup> This is different from the receipt doctrine adopted in article 26(1) of the Chinese Contract Law 1999, which provides that acceptance becomes effective when the notice of acceptance reaches the offeror.

<sup>63</sup> Ibid., art.10(2).

<sup>64</sup> As to the approach that the insurance money to be disbursed as the life insured’s estate specified in article 42 of the Insurance Law, the author argued that “it is not appropriate to disburse insurance money as the life insured’s estate”. See Jing’s paper on beneficiaries 2013, p.478.

beneficiaries are entitled to receive the same proportion of the insurance benefits. But article 40 of the Insurance Law does not provide rules in relation to the sequence of the beneficiaries and their respective proportions of insurance benefits under some circumstances, such as where one or more of the beneficiaries die before the death of the life insured, or abandon or lose their right as beneficiaries. The Interpretation (III) has developed some rules to resolve these issues unaddressed in article 40 of the Insurance Law.

Article 12 of the Interpretation (III) provides that where the proposer or the life insured designates more than one beneficiaries and one or some of the beneficiaries die before the death of the life insured or some of them abandon the right of beneficiary or lose the beneficiary right by the operation of law, the portion of the insurance money the beneficiary should have recovered shall be disposed in accordance with the agreement of the contract, if there is no agreement or the agreement is not clear, the portion of the deceased beneficiary(s) shall be disposed according to the rules in the following circumstances:

- (1) Where neither beneficiary sequence nor proportion of the insurance benefits for each beneficiary are specified, the deceased beneficiary's portion of insurance money shall be shared by other beneficiaries equally;
- (2) Where no beneficiary sequence is specified but the proportion of the insurance benefits for each beneficiary is specified, the deceased beneficiary's portion shall be shared by other beneficiaries according to their corresponding proportions.
- (3) Where beneficiary sequence is specified but the proportion of the insurance benefits for each beneficiary is not specified, the deceased beneficiary's portion shall be shared equally by other beneficiaries who were in the same sequence as the deceased beneficiary was. If there is no other beneficiary in the same sequence, the deceased beneficiary's portion shall be shared equally by the beneficiaries in the next sequence.
- (4) Where both the beneficiary sequence and the proportion of the insurance benefits for each beneficiary are specified, the deceased beneficiary's portion shall be shared by other beneficiaries who were in the same sequence as the deceased beneficiary was, according to their corresponding proportions. If there is no other beneficiary in the same sequence, the deceased beneficiary's portion shall be shared by the beneficiaries in the next sequence according to their corresponding proportions.

The Interpretation (III) also provides a rule to solve the problem which is left unclear in the Insurance Law regarding the way of disbursing the insurance money where the insurance money is treated as the insured's estate. According to article 42 of the Insurance Law, where the insurance money is treated as the life insured's estate, the insurer is required to pay the insurance money to the legal successor(s) of the life insured, but the Law is unclear as to whether the insurer needs to disburse the insurance money to one of the successors or to all the successors, if to all successors, is it the insurer's obligation to ascertain all of them?

Most claim handlers expressed the view that the insurer must identify all successors.<sup>65</sup> However, it is very hard for an insurance company to identify and inform all successors to come to pick up their share of insurance moneys. On the other hand, it should not be the insurer's obligation to do such a job. In practice, in order to reduce disputes, the insurers adopt a variety of approaches for disposing the insurance money to the legal successors(s) of the life insured.<sup>66</sup> First, they may request the legal successor who claims for the insurance money to provide the insurer with a declaration, which states that no other successors would claim for the insurance money and the insurer is not liable if there is any other claims. Second, to request the representative of all successors to supply the insurer with an agreement signed by all successors, which says that the insurance money can be paid to the representative. Third, to request the legal successor who claims for the insurance money to sign an agreement with insurer, which states that if other successors demand insurance money, the person who has received the insurance money needs to return the money, and the insurer will redistribute the insurance money. And fourth, to request the legal successor who claims for the insurance money to submit an agreement of distribution of the insurance money among all successors, the insurer then distribute the money to all successors according to the names and proportions in the agreement.

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<sup>65</sup> Yiding Wu, "How to pay claims in the case of no beneficiary in the insurance policy" (Insurance Newspaper, 11 November 2005).

<sup>66</sup> See Lingqing Wang, *The Insurance Law & Its Judicial Application – Issues on the Insurance Law* (Law Press China, 2013), p591.

These ways of disbursing the insurance money obviously increase the insurers' burden, thus the running costs. These costs in the end have to be placed on the insureds. To make it easier for the insurer to distribute insurance money in this situation, the SPC has formulated a new rule: the insurer can pay the insurance money to the legal successor who possesses the insurance policy.<sup>67</sup> Article 14 of the Interpretation (III) provides that "where the insurance money is disposed as the life insured's estate in accordance with article 42 of the Insurance Law, the insurer may refuse the claim for insurance money by a legal successor of the life insured on the defence that the insurance money has been paid to another legal successor of the life insured who possesses the insurance policy, the people's courts shall support the insurer's defence". This means that if the insurance money is treated as the life insured's estate and the insurer has paid the insurance money to the legal successor of the life insured who has the insurance policy, the insurer can be deemed to have performed his duty of paying insurance benefit.

### ***The life insured and the beneficiary die in the same event***

By virtue of the second paragraph of article 42 of the Insurance Law, where the beneficiary and the life insured die in a same event, and the sequence of their deaths cannot be ascertained, it is assumed that the beneficiary dies first. In *Mrs Zhang v Life Insurance Company*,<sup>68</sup> Mrs Zhang effected a life policy on her own life and nominated her husband as the beneficiary. The couple were killed in the same car accident. According to article 42 of the Insurance Law, the husband, (the beneficiary) was presumed to die before the life insured. So it was held that the life insured's successors were entitled to recover the insurance money as the life insured's estate.<sup>69</sup>

The Interpretation (III) develops article 42 of the Insurance Law further in relation to disposing the insurance money where the life insured and the beneficiary die in the same event, by providing that if the beneficiary and the life insured have the relationship of inheritance, and they die in the same event, the insurance money can be disposed in accordance with relevant provisions of the Insurance Law and the Interpretation (III).<sup>70</sup> Here, the relevant provision of the insurance Law refers to article 42 which treats the insurance money as the life insured's estate where the sole beneficiary dies earlier than the life insured does; while the relevant provision of the Interpretation (III) refers to article 12 which provides rules for disposing insurance money in, inter alia, the case where there are more than one beneficiaries, and one or more beneficiary dies earlier than the life insured does.

### ***The transfer of the beneficiary right***

The Insurance Law does not cover the point whether the beneficiary may transfer his/her beneficiary right to another person. The Interpretation (III) gives a provision in this regard. It is provided that "after the occurrence of the insured event the beneficiary transfers all or part of the beneficiary right corresponding to the insured event to another person(s), the courts shall support such a transfer, except where the beneficiary right is not allowed to be transferred in accordance with the nature of the contract or the agreement of the parties."<sup>71</sup> This provision implies that before the occurrence of the insured event, the beneficiary is not allowed to transfer his/her right of beneficiary to another person,<sup>72</sup> because the beneficiary right is only an expected right before the occurrence of the insured

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<sup>67</sup> The Interpretation (III), article 14.

<sup>68</sup> See Yuhua Zhou, *The Latest Insurance Law and Doctrines: Cases, Materials and Problems* (Law Press China, 2008) p527.

<sup>69</sup> Ibid.

<sup>70</sup> The Interpretation (III), article 15.

<sup>71</sup> Ibid., art.13.

<sup>72</sup> When the Interpretation (III) was only a draft for consultation, this point was provided in article 23 of the draft, it was provided in article 23:

"Before the insured event has occurred, the beneficiary cannot transfer the beneficiary right to other person(s) without the consent of the proposer and the life insured.

After the occurrence of the insured event, the beneficiary may transfer all or part of the beneficiary right to another person(s) except where the beneficiary right is not allowed to be transferred in accordance with the nature of the contract or the agreement of the parties."

It is unclear why the Interpretation (III) does not include the provision in the first paragraph of article 23 in the draft version of the Interpretation. Now article 13 of the Interpretation (III) implies that before the insured event has occurred, beneficiary right cannot be transferred to other person(s).



event which will become an exercisable right only after the occurrence of the insured event. And it is also because the beneficiary is designated by the proposer and the insured, the beneficiary right cannot be transferred freely without the consent of the proposer and the life insured.<sup>73</sup> It is not clear whether it can be transferred to another person with the consent of the proposer and the life insured prior to the occurrence of the insured event.<sup>74</sup>

Nevertheless, after the insured event has occurred, the beneficiary's right to claim for the insurance benefits becomes an actual right. He/she then has the freedom to assign this right to another person.

### ***Refunding of the cash value of the policy***

The insurance Law allows the proposer to rescind the contract at any time during the insurance period.<sup>75</sup> As to the issue on refunding of the cash value, article 16 of the Interpretation (III)<sup>76</sup> provides that "at the time of rescinding the contract, where the proposer is not the same person as the life insured or the beneficiary, the life insured or the beneficiary demands the cash value of the policy, People's court shall not support such a demand, except as otherwise agreed by the insurance contract". This means that if the proposer rescinds the contract, the cash value of the policy should be returned to the proposer who paid the premium to the insurer for the policy, not to the life insured or the beneficiary unless otherwise agreed in the insurance contract.

Article 43 of the Insurance Law stipulates that "where the proposer has intentionally caused the death, disability or illness of the life insured, the insurer shall not be liable for payment of the insurance benefits. Where the proposer has paid premiums for two or more years, the insurer shall, in accordance with the contract, refund the cash value of the policy to other persons entitled thereto". The second sentence of this article is unclear in respect of the question of who should be the other persons entitled to receive the cash value, and the question of what is the sequence for the other persons to receive the cash value.

These ambiguities are clarified by article 16 of the Interpretation (III)<sup>77</sup> which provides that "where the proposer has intentionally caused the death, disability or illness of the life insured, and the insurer refunds the cash value of the insurance policy pursuant to the provision of article 43 of the Insurance Law, and other persons entitled to receive the cash value can be determined according to the sequence of the life insured, and then the life insured's successors". This means that if the proposer has intentionally caused disability or illness of the life insured, the cash value of the policy shall be paid to the life insured; if the proposer has intentionally caused the death of the life insured, the cash value of the policy shall be paid to the life insured's successors.

### ***Whether the consent of the life insured or the beneficiary must be obtained where the proposer rescind the contract***

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In some other jurisdictions, a beneficiary is prohibited from assigning his right to another person without the consent of the proposer. For example, article 114 of the Insurance Act 2015 in Taiwan provides: "A beneficiary may not assign its benefits to other persons unless the proposer consents or the insurance contract expressly permits such assignment".

<sup>73</sup> For example, in the case of *Mr Liu v the Life Insurance Company* 2004, Mr Liu's father effected a life policy on his mother and nominated Mr Liu as the beneficiary. Mr Liu divorced his wife by agreement and wished to transfer his beneficiary right under his father's policy to his ex-wife, because his ex-wife lived with and fostered their only daughter. Fearing that his parents would not agree for such a transfer, he did not tell his parents and asked the insurer to transfer his right to his ex-wife. The court held that the transfer of the beneficiary's right to another person without the consent of the proposer and the life insured was invalid. (This case was cited in the book by Haichun Yu and Chunyan Fu, *Analysis of Insurance Cases* (University of International Business and Economics Press, 2009), p189.

<sup>74</sup> Most probably, it can be transferred to another person with the consent of the proposer and the life insured prior to the occurrence of the insured event. Here the beneficiary's transfer of his right to another person with the consent of the proposer and the life insured would be equivalent to the change of beneficiary by the proposer and the life insured.

<sup>75</sup> The Insurance Law, art.15.

<sup>76</sup> The Interpretation (III), art.16, para.1.

<sup>77</sup> The Interpretation (III), art.16, para.2.

The Interpretation (III) also provides rules on the issue of rescission of a life insurance contract. Article 17 provides that where the proposer rescinds the contract, if the relevant parties claim that the rescission is invalid without the consent of the life insured or the beneficiary, the people's courts shall not uphold such a claim, except where the life insured or the beneficiary has paid a sum of money equivalent to the cash value of the policy and informed the insurer.

This provision answers the question of whether the proposer may rescind a contract without the consent of the life insured or the beneficiary in life insurance. This issue may not arise where the proposer, the life insured and the beneficiary is the same person, namely the policy is a self-benefit policy under which the proposer takes out insurance on his own life for the benefit of himself.<sup>78</sup> However, if the policy is an altruistic policy which is effected by the proposer for the benefit of other person(s), this issue may arise. Most life policies are altruistic policies.

There are two situations: first, the proposer, the life insured and the beneficiary are different persons; and second, the proposer and the life insured is the same person but the beneficiary is another person(s). The Insurance Law gives the right to the proposer to rescind the contract and does not provide whether the consent of the insured and the beneficiary must be obtained where the proposer rescinds the contract.<sup>79</sup>

Article 17 of the Interpretation (III) indicates that the consent of the life insured or/and the beneficiary is not needed. However the declaration for the invalidity of the rescission of the contract can be upheld by the courts if the insured or the beneficiary has paid a sum of money equivalent to the cash value of the policy to the proposer. As to this point, it is submitted that the consultation draft of the Interpretation (III) was clearer.<sup>80</sup> According to the consultation draft, where the proposer, the life insured and the beneficiary are different persons, where the proposer rescinds the contract, the consent of the life insured and the beneficiary are not needed. However, the proposer must inform the life insured and the beneficiary when he rescinds the contract. If the life insured or the beneficiary or any person with the life insured's consent wishes to take over the contract by paying the amount equivalent to the cash value of the policy, this shall be upheld by the courts.

### **Rules on medical insurance**

Matters regarding medical insurance are not covered in the Insurance Law. The Interpretation (III) has provided some rules for medical insurance in articles 18, 19 and 20.

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<sup>78</sup> Such as pension insurance or annuity insurance.

<sup>79</sup> Due to the lack of provision in the Insurance Law on this point, disputes often arise in practice. For example, in *Mr Liu v Life Insurance Company*, Mr Liu was employed in a factory which effected a group pension insurance policy for the benefits of its employees (including Mr Liu) with the Life Insurance Company in 1988. In 2000 the factory was closed. The factory rescinded the policy without the life insureds' consent. The insurer returned the partial premium after deducting the amount of the premium from the date of the commencement of the insurer's liability and the date of rescission. Mr Liu sued the insurer and argued that the rescission of the policy should be invalid without the insureds' consent. The court held that because pension insurance is a long-term policy, the insured or the beneficiary has the expectation to recover the insurance benefits, where the proposer rescinds the contract, the insured's or the beneficiary's consent should be obtained. The rescission was invalid without the consent of the insured or the beneficiary. (See Jing Wang, "Discussion on the Proposer's Rescission Right in an altruistic insurance contract" (2013) Law Application, issue 2; [www.civillaw.com.cn/article](http://www.civillaw.com.cn/article)). However in a similar case the court gave different judgement and held that it is not necessary to obtain the insured's or the beneficiary's consent when the proposer rescinds the contract because the proposer is the party who enters into the contract with the insurer, so he has the right to rescind the contract whenever he wishes. (*Lu v XY Insurance Life Company*. This case was cited by Jing Wang, "Discussion on the Proposer's Rescission Right in an altruistic insurance contract" (2013) Law Application, issue 2; [www.civillaw.com.cn/article](http://www.civillaw.com.cn/article)).

<sup>80</sup> The Consultation Draft of the SPC's Interpretation (III) was published in Oct 2014, See art. 27 for the provision.

In China, medical insurance, in accordance with the nature of the payment of the insurance money, can be divided into two types: one is expenses compensation medical insurance<sup>81</sup> and the other is fixed amount of payment medical insurance.<sup>82</sup> The amount of payment for an expenses compensation medical insurance shall not exceed the amount of medical expenses actually incurred on the insured.<sup>83</sup> For expenses compensation medical insurance, it is the general practice that when the insurer pays the insurance money, it usually deducts the amount received by the insured from other channels from the total amount actually incurred on the insured, and People's courts usually support this practice. For example, in *Mr Xu v the Insurance Company Ltd, Jiangsu Province Branch*,<sup>84</sup> the insured received certain amount of medical costs from the social medical insurance department, so the court supported the insurer's demand to deduct that amount from the total medical expenses incurred on the insured. The court treated the expenses compensation medical insurance as indemnity insurance.

The SPC's Interpretation (III) has recognized the general practice in the industry and established rules in this regard. Article 18 of the Interpretation provides that for an expenses compensation medical insurance policy, where the insurer demands to deduct the compensation received by the insured from the State under the public health system<sup>85</sup> or social health insurance when he pays the insurance money for the medical expenses, he must prove that when setting up the premium rate for such a type of insurance policy, deduction of the proportion corresponding to the public health benefits and the social health insurance benefits was taken into account, and the premium was collected according to that premium rate.

In practice, the CIRC requires the insurers to treat the insureds who have right to enjoy public health service differently from those who have to pay for themselves for the medical service, in terms of the premium rate to be charged and the amount of insurance money to be paid.<sup>86</sup> At the time of selling the expenses compensation medical insurance policies, the insurers or their agents must make inquiry on the life insured to find out whether he has the right to use public medical service, or have social medical insurance or other expenses compensation medical insurance with other insurers.<sup>87</sup> The information can be used to work out the premium rate to be charged on the proposer.

Article 19 of the Interpretation (III) provides that where an insurance contract agrees that the medical expenses shall be approved in accordance with the basic medical insurance standard, the insurer is not allowed to reject a claim for insurance money on the ground that the medical expenses exceeded the limit set by the basic medical insurance standard; but if the insurer can prove that the actual medical expenses paid by the insured exceeded the limit by the similar treatment in accordance with the basic medical insurance standard, the People's courts shall support the insurer's demand to refuse paying the amount by which the expenses exceeds the limit by the basic medical insurance standard.

The CIRC permits the insurers to include a term in the contract that requires the life insured to take medical service in the network of nominated hospitals.<sup>88</sup> Article 20 of the Interpretation (III) provides that where the insurer rejects a claim for insurance payment for medical expenses on the ground that the insured received the medical treatment in a

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<sup>81</sup> Expenses compensation medical insurance refers to the medical insurance under which the amount of the insurance payment shall be determined on the basis of the medical expenses actually incurred on the insured, and in accordance with the agreed standard. See the Health Insurance Administration Regulation by the CIRC, 2006, art. 4.

<sup>82</sup> Fixed amount of payment medical insurance refers to the medical insurance under which a fixed amount of the insurance money shall be paid in accordance with the agreement in the contract. For example, under a critical illness policy, if the insured is diagnosed with a named critical disease, such as cancer, the insurer will pay a fixed amount of insurance money to the proposer, and then the contract will be terminated. See the Health Insurance Administration Regulation by the CIRC, 2006, art. 4.

<sup>83</sup> See the Health Insurance Administration Regulation by the CIRC, 2006, art. 4.

<sup>84</sup> This case was decided by the People's Court, Xuanwu district, Nanjing City, Jiangsu Province, Civil Court Judgement (2011) No 96, and is reported in *the Annual Report of the Typical Insurance Cases* (Law Press China, 2012) Vol 4, p165.

<sup>85</sup> In China, employees by the State-owned establishments usually have free public health service, but farm workers do not have this free service and they have to pay for themselves for medical service.

<sup>86</sup> See the Health Insurance Administration Regulation by the CIRC, 2006, art. 22.

<sup>87</sup> *Ibid*, art. 29.

<sup>88</sup> *Ibid*, art. 23.

medical institution other than that specified in the insurance contract, the People's courts shall uphold the insurer's rejection, except for the case where the insured needs medical treatment in case of an emergency in a hospital which is not nominated in the insurance contract.

## Conclusion

Generally speaking, the SPC's Interpretation (III) is successful in clarifying a number of ambiguities of the relevant provisions of the Insurance Law in relation to life insurance and in formulating new approaches to fill the gaps in many aspects of the Law. Many of the long-disputed issues with regard to beneficiaries and insurable interest are resolved by the Interpretation. It is submitted that in the main the overall thrust of the Interpretation (III) has been fair and reasonable, with some issues being resolved in a manner which favours the proposer,<sup>89</sup> the life insured<sup>90</sup> or the beneficiary,<sup>91</sup> and others that favours the insurer.<sup>92</sup> However, improvement of the Interpretation is still needed.

Two shortcomings have been identified in articles 1 and 9 of the Interpretation. Recommendations for amendments are made as follows:

- (1) One sentence is to be added into article 1, which reads "*... the ratification of the life insured's consent after conclusion of the contract is valid only for the situation where the proposer possesses an insurable interest in the life insured at the time of conclusion of the contract*".
- (2) As to article 9(3), it is recommended that where the beneficiary is designated with both the name and the identity relationship, if the relationship has been changed at the time of the occurrence of the insured event, *the beneficiary should be determined by name*.

With the rapid development of the insurance industry in China, new situations will continue to happen and more issues may arise in the case where no rule is to follow or the rule of law is uncertain. So before the next round of reform on the Insurance Law is initiated, it is still up to the SPC to go further to clear those ambiguities in the statutory law and formulate new rules to supplement the Insurance Law.

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<sup>89</sup> For example, art.8 of the Interpretation places a restriction on the insurers, that is, the insurers are allowed to reject applications for restoration of a lapsed policy only for the situation where the risk of the life insured has been significantly increased during the period of suspension of the policy.

<sup>90</sup> For example, art.2 of the Interpretation allows the life insured to withdraw his consent to a death policy on his life.

<sup>91</sup> For example, art.9(1) of the Interpretation sets up the rule to determine the beneficiaries by following the Inheritance Law when the life insured dies under the circumstance where the beneficiaries in the insurance contract are to be "determined by law" or "legal successor(s)".

<sup>92</sup> For example, art.14 of the Interpretation greatly facilitate the insurer in disposing insurance money as the life insured's estate by providing that the insurer may pay the insurance money to the life insured's successor(s) who possesses the life policy.